

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

AARON L. JACOBS, JR.,

Plaintiff,

-vs-

Case No. 09-C-0406

CORPORAL G. OWEN, CORPORAL LEYENDECKER,
C.O. BRIAN NIES, CORPORAL MISTY ANDERSON,
C.O. JENIFFER JEAN PAGEL, C.O. LAWRENCE A. OLSEN,
and C.O. NICHOLAS J. DEQUAINE,

Defendants.

DECISION AND ORDER

The plaintiff has filed a motion to clarify the April 29, 2010, decision and order in this case. The court dismissed the plaintiff's due process claim against defendants Corporal Gwen Owen and Lt. John William Mitchell because the court determined that the plaintiff had pled himself out of court by saying that Mitchell had found him not guilty. The plaintiff asks the court to re-screen the due process claim set forth in his amended complaint.

In his motion, the plaintiff first references exhibits attached to his original complaint that show that Mitchell upheld the sanctions imposed by Owen. However, the plaintiff did not submit those documents with his amended complaint so they were not part of that pleading. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056 (7th Cir. 1998) ("prior pleading is in effect withdrawn as to all matters not restated in the amended pleading").

The plaintiff also directs the court to the averment in his amended complaint that Mitchell told the plaintiff, “I’m not finding you not guilty.” (Amended Complaint at 7). Based on this averment in the plaintiff’s Amended Complaint, the court will grant the plaintiff’s motion to clarify and screen the substance of the plaintiff’s due process claim against defendants Owen and Mitchell. *See* Fed. R. Civ. P. 54(b); 28 U.S.C. § 1915A.

The plaintiff objects to the treatment of his conduct report by defendants Owen and Mitchell and argues that he did not receive due process before sanctions (30 days of punitive segregation and 30 days loss of recreation) were imposed. States may, under certain circumstances, create liberty interests that are protected by the Due Process Clause. *Sandin v. Connor*, 515 U.S. 472, 483 (1995). However, “these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* At this time, the plaintiff may proceed on a due process claim against defendants Owen and Mitchell.

IT IS THEREFORE ORDERED that the plaintiff’s motion for to clarify decision and order (Docket #27) is **granted**.

IT IS FURTHER ORDERED that defendant Lt. John William Mitchell be reinstated as a defendant in this action.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the amended complaint, the summons, the court's order dated April 29, 2010, and this order upon Lt. John William Mitchell pursuant to Federal Rule of Civil Procedure 4. The plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2), (a)(3). Although Congress requires the court to order service by the U.S. Marshals Service precisely because *in forma pauperis* plaintiffs are indigent, it has not made any provision for these fees to be waived either by the court or by the U.S. Marshals Service.

IT IS ALSO ORDERED that the defendant Mitchell shall file a pleading responsive to the amended complaint.

IT IS ALSO ORDERED that copies of this order be sent to the Warden of the institution where the plaintiff is incarcerated and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 9th day of June, 2010.

SO ORDERED,

s/ Rudolph T. Randa

HON. RUDOLPH T. RANDA
U. S. District Judge